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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 160808696-7010-02]

RIN 0648-BH38

2017 Tribal Fishery Allocations for Pacific Whiting; Reapportionment Between Tribal and Non-tribal Sectors; Widow Rockfish Reapportionment in the Pacific Whiting Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; reapportionment of tribal Pacific whiting allocation and widow rockfish allocation.

SUMMARY: This document announces the reapportionment of 41,000 metric tons (mt) of Pacific whiting from the tribal allocation to the non-tribal commercial fishery sectors via automatic action on September 15, 2017, in order to allow full utilization of the Pacific whiting resource, and the reapportionment of 47 mt of widow rockfish in the Pacific whiting fishery via automatic action on August 30, 2017. The reapportionment of widow rockfish from the Mothership Cooperative to the Catcher Processor Cooperative was necessary to prevent the Catcher Processor Cooperative from reaching its quota for widow rockfish early, thereby closing the fishery before the end of the season and preventing attainment of their Pacific whiting allocation.

DATES: The reapportionment of Pacific whiting was applicable from 12 p.m. Pacific standard time, September 15, 2017, until December 31, 2017. The reapportionment of widow rockfish was applicable from 8 p.m. Pacific standard time, August 30, 2017, until December 31, 2017.

Comments will be accepted through *[insert date 15 days after date of publication in the FEDERAL REGISTER]*.

ADDRESSES: You may submit comments, identified by NOAA-NMFS-2017-0136 by any of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal at www.regulations.gov/#/docketDetail;D=NOAA-NMFS-2017-0136, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- Mail: Barry A. Thom., Regional Administrator, West Coast Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115-0070, Attn: Keeley Kent.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Keeley Kent (West Coast Region, NMFS),

phone: 206-526-4655 or e-mail: *Keeley.Kent@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Electronic Access

This notification is accessible via the Internet at the Office of the Federal Register's Website at <http://www.gpo.gov/fdsys/search/home.action>. Background information and documents are available at the Pacific Fishery Management Council's website at <http://www.pcouncil.org/>.

Background

Pacific Whiting

Pacific whiting (*Merluccius productus*) is a very productive species with highly variable recruitment (the biomass of fish that mature and enter the fishery each year) and a relatively short life span when compared to other groundfish species. Pacific whiting has the largest (by volume) annual allowable harvest levels of the more than 90 groundfish species managed under the Pacific Coast Groundfish Fishery Management Plan (FMP), which governs the groundfish fishery off Washington, Oregon, and California. The coastwide Pacific whiting stock is managed jointly by the United States (U.S.) and Canada, and mature Pacific whiting are commonly available to vessels operating in U.S. waters from April through December. Background on the stock assessment for and the establishment of the 2017 Total Allowable Catch (TAC) for Pacific whiting is provided in the final rule for the 2017 Pacific whiting harvest specifications, published May 8, 2017 (82 FR 21317). Pacific whiting is allocated to the Pacific Coast treaty tribes (tribal fishery), and to three non-tribal commercial sectors: the Catcher Processor cooperative (C/P

Coop), the Mothership Cooperative (MS Coop), and the Shorebased Individual Fishery Quota (IFQ) Program.

This notification announces the reapportionment of 41,000 mt of Pacific whiting from the tribal allocation to the non-tribal commercial sectors on September 15, 2017. Regulations at § 660.131(h) contain provisions that allow the Regional Administrator to reapportion Pacific whiting from the tribal allocation, specified at § 660.50, that will not be harvested by the end of the fishing year to other sectors.

Pacific Whiting Reapportionment

For 2017, the Pacific Coast treaty tribes were allocated 77,251 mt of Pacific whiting. The best available information in early September 2017 indicated that there had been no annual harvest by the tribes to date, and at least 41,000 mt of the tribal allocation would not be harvested by December 31, 2017. To allow for increased utilization of the resource, NMFS reapportioned 41,000 mt on September 15, 2017 from the Tribal fisheries to the Shorebased IFQ Program, C/P Coop, and MS Coop. The reapportionment occurred in proportion to each sector's original allocation. Reapportioning this amount was expected to allow for greater attainment of the TAC while not limiting tribal harvest opportunities for the remainder of the year. On September 15, 2017, emails sent directly to fishing businesses and individuals, and postings on the West Coast Region's internet site were used to provide actual notice to the affected fishers. Reapportionment was effective the same day as the notice.

Amounts of Pacific whiting available for 2017 before and after the reapportionment were:

Sector	Initial 2017 Allocation (mt)	2017 Allocation (mt) after September 15, 2017
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Tribal	77,251	36,251
C/P Coop	123,312	137,252
MS Coop	87,044	96,884
Shorebased IFQ Program	152,327	169,547

Widow Rockfish

Widow rockfish (*Sebastes entomelas*) range from Albatross Bank off Kodiak Island, Alaska to Todos Santos Bay, Baja California, Mexico. They are an important commercial species from British Columbia to central California. Off the West Coast of the U.S., widow rockfish are caught mostly in midwater trawls used to target Pacific whiting, although in recent years there's been a reemergence of the pelagic rockfish fishery for widow, chilipepper, and yellowtail. The widow stock is managed coastwide, and was declared overfished in 2001. As of the 2015 stock assessment the stock has been rebuilt to 75.1 percent depletion. Management uncertainty is low since widow rockfish is a trawl-dominant species and there is mandatory 100 percent observer coverage in the trawl IFQ fisheries.

In accordance with the FMP, the non-tribal limited entry groundfish trawl fishery is allocated 91 percent of the widow rockfish ACL with the remaining 9 percent going to non-tribal non-trawl commercial, and recreational fisheries. The allocation for widow rockfish is split between the at-sea and shorebased sectors in accordance with an allocation formula established under Amendment 21 to the FMP. Under this formula, the greater of 10 percent or 500 mt of the trawl fishery allocation is allocated to all Pacific whiting sectors (at-sea and shorebased) with the

remainder going to the non-whiting portion of the Shorebased IFQ Program. Of the amount allocated to the Pacific whiting sectors, 42 percent is allocated to the Shorebased IFQ Program. This 42 percent is combined with the remainder that went to the non-whiting portion of the Shorebased IFQ Program to create a single allocation for the Shorebased IFQ Program. Further information on the 2017 allocations for widow rockfish is provided in the final rule for the 2017-2018 biennial specifications for the Pacific coast groundfish fishery, which published on February 7, 2017 (82 FR 9634).

This notification announces the reapportionment of 47 mt of widow rockfish from the C/P Coop allocation to the MS Coop that was effective on August 30, 2017. Regulations at § 660.60(d) contain provisions that allow the Regional Administrator to reapportion non-whiting groundfish species between the C/P and MS cooperatives.

Widow Rockfish Reapportionment

For 2017, the C/P Coop was allocated 411.2 mt of widow rockfish, while the MS Coop was allocated 290.3 mt. On August 14, 2017 the MS Coop submitted a cease fishing report to NMFS indicating that they do not intend to use 47 mt of their allocation of widow rockfish which is therefore available to redistribute to the C/P Coop. The MS Coop indicated that they will cease fishing for Pacific whiting for the remainder of 2017 upon harvesting all Pacific whiting quota available to that cooperative, or harvesting the remaining 243.3 mt of widow rockfish, whichever occurs first.

As of August 23, 2017, the best available information indicated that the MS Coop of the Pacific whiting fishery had taken only seven percent of its 2017 widow rockfish allocation of

290.3 mt. At the same time, the C/P Coop had taken more than 50 percent of its 2017 allocation of 411.2 mt. Therefore, on August 30, 2017, NMFS reapportioned 47 mt widow rockfish from the MS Coop to the C/P Coop. Emails sent directly to fishing businesses and individuals and postings on the West Coast Region's internet site on August 30, 2017, were used to provide actual notice to the affected fishers. Reapportionment was effective the same day as the notice.

Reapportionment of unused portions of non-whiting groundfish species between the MS Coop and the C/P Coop of the Pacific whiting fishery when participants in the one cooperative do not intend to harvest the remaining allocation, are described at § 660.150(c)(4)(ii). This reapportionment was expected to allow for the Pacific whiting fishery to continue for a longer period without the C/P Coop exceeding its 2017 allocation of widow rockfish and reduce the risk of the C/P Coop not attaining its Pacific whiting allocation based on incidental catch of widow rockfish.

Amounts of widow rockfish available for 2017 before and after the reapportionment were:

Sector	Initial 2017 Allocation (mt)	2017 Allocation (mt) after August 30, 2017
MS Coop	290.3	243.3
C/P Coop	411.2	458.2
Shorebased IFQ Program	508.0	508.0

Classification

The Assistant Administrator for NMFS's Sustainable Fisheries finds that good cause exists for this notification to be issued without affording prior notice and opportunity for public

comment pursuant to 5 U.S.C. 553(b)(B) because such notification would be impracticable and contrary to the public interest. As previously noted, actual notice of the reapportionments was provided to fishers at the times of the actions. Prior notice and opportunity for public comment on these reapportionments was impracticable because NMFS had insufficient time to provide prior notice and the opportunity for public comment between the time the information about the progress of the fishery needed to make this determination became available and the time at which fishery modifications had to be implemented in order to allow fishers access to the available fish during the remainder of the fishing season. For the same reasons, the AA also finds good cause to waive the 30-day delay in effectiveness for these actions, required under 5 U.S.C. 553(d)(3).

These actions are authorized by §§ 660.55(i), 660.60(d), 660.131(h), and 660.150(c)(4)(ii) and are exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 773 *et seq.*, and 16 U.S.C. 7001 *et seq.*

Dated: February 7, 2018.

Jennifer M. Wallace,
Acting Director,
Office of Sustainable Fisheries,
National Marine Fisheries Service.

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